Supreme Court, U.S.
FILED
NOV 22 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 84-1616

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

PARSONS STEEL, INC., JIM D. PARSONS and MELBA L. PARSONS, and A. POPE GORDON, Trustee in Bankruptcy for the Estate of PARSONS STEEL INDUSTRIES, INC.,

Petitioners,

vs.

FIRST ALABAMA BANK OF MONTGOMERY, N. A., and EDWARD HERBERT,

Respondents.

On Writ of Certiorari To The United States Court of Appeals for the Eleventh Circuit

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

ARGUMENT

I. The District Court Erred In Refusing To Give Full Faith And Credit To The State Court Judgment.

Bank and Herbert refuse to directly confront the most important issue presented: whether the district court erred in refusing to give full faith and credit to the state court judgment. Bank and Herbert do not deny - nor could they - that the preclusive effect to be given the earlier federal judgment was placed in issue and litigated on the merits in state court. The state court determined that the federal judgment did not preclude the State Action. (A.219, 220, 251). That determination was necessary to the final judgment rendered in state court.

The Court of Appeals attempted to legitimize the district court's refusal to give full faith and credit to the state court judgment by holding that the Anti-Injunction Act is an implied exception to the Full Faith and Credit Act. (747 F.2d at 1376. Pet. Cert. A.15) Bank and Herbert make no such argument here but attempt to characterize the issue as "simply irrelevant". (Respondent's brief p.25) It is no surprise Bank and Herbert attempt to ignore this issue because it can only be resolved against them and requires reversal of the district court's injunction.

The state court's resolution of the res judicata issue bound the federal district court in this case. The Full Faith and Credit Act absolutely requires that full faith and credit be given to a state court determination *unless* Congress in a later statute has "clearly manifested" its intent to repeal the Act. *Kremer v. Chemical Construction Corporation,* 456 U.S. 461, *reh. denied,* 458 U.S. 1133, (1982). *Allen v. McCurry,* 449 U.S. 90 (1980). Banks suggests no clear intent to repeal but instead recognizes that the most recent amendment to the Anti-Injunction Act was intended merely to "restore the basic law as generally understood and interpreted prior to the *Toucey* decision." (Respondent's brief p. 20) *Mitchum v. Foster,* 407 U.S. 225, 236 (1972). No case prior to *Toucey* held that a federal court need not give full faith and credit to a state court judgment in these circumstances. The *Toucey* decision did not consider that issue and neither did Justice Reed in dissent. The 1948 amendment is no authority for Bank's position that the Full Faith and Credit Act is "simply irrelevant".

When Congress enacted the Federal Habeas Corpus Act it intended to modify the operation of the Full Faith and Credit Act and plainly said so. *See,* 28 U.S.C. §2254. The Full Faith and Credit Act had been the law for many years when the 1948 amendment to the Anti-Injunction Act was enacted. Had Congress intended to create an exception to the Full Faith and Credit Act it would have clearly indicated that intent in the Statute or at least there would be some indication of that intent in the legislative history.

Bank advances the Court of Appeal's argument that the failure to recognize the Anti-Injunction Act as an implied exception to the Full Faith and Credit Act would require a party with a prior federal judgment "to rush back to federal court for a res judicata ruling any time there was a possibility that a state court might rule on the issue first." 747 F.2d 1376 (Pet. Cert. A.16).[1] As a matter of policy that result is certainly preferable to allowing a party - such as Bank here - to fully litigate its res judicata defense along with other defenses in state court before seeking an injunction in federal court. The latter interpretation both increases the conflict between co-existing equal court systems and fails to effect the policy of res judicata, that is, to avoid multiple resolution of the same issue.

Bank and Herbert also seem to suggest that the Full Faith and Credit Act does not apply because the state court in resolving the res judicata issue applied federal law. This Court has clearly held that a federal court must afford full faith and credit to a state court resolution of federal law even if it involves the interpretation of rights secured by the Constitution of the United States. *Allen v. McCurry,* 449 U.S. 90 (1980). Bank's logic here is twisted. The federal court is bound to give the same preclusive effect to the state court judgment (that the federal judgment did not bar the State Action) as would be given in state court. It makes no difference whether the state court applies state or federal law in reaching that judgment.

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[1] As Judge Hill, in dissent, clearly shows the injunction could be sought at any time prior to a decision on the merits.

II. The District Court Erred In Enjoining A Pending State Court Proceeding.

A. No Issue Actually Litigated In The Federal Judgment Was Repeated In The State Action.

Bank and Herbert continue to argue that the Federal Action resolved certain issues of law and fact which were repeated in the State Action. Bank can not, however, reconcile that argument with the issues outlined in the pretrial order in the Federal Action.[2]

Counsel for Bank summarized the issues to be resolved in the Federal Action in his opening statement in that case:

> The act that we are concerned with here, the act of Congress, is what is called an anti-trust type statute. Now, the anti-trust laws for most businesses were passed many years ago, back at the later part of the last century, in the 1980's. And, essentially, what those laws were designed to do was to protect free competition so...that companies couldn't combine with each other to set prices to put other companies out of business, and to do other practices, among them, practices called tying arrangements. And this gets to the statute we are talking about regarding banks.
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> * * *
>
> Now, in 1972 Congress said to banks, you cannot engage in tying arrangements.
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> * * *

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[2] Statement of Plaintiffs' Case: A. The Plaintiffs contend that the Defendant, a national banking association, violated Title 12 U.S.C. §1972, by placing certain requirements on Plaintiffs - the Defendant's customers - as conditions to making additional loans and extending credit to Parsons Steel Industries, Inc. These conditions were not of such nature as to be usually provided to a bank by a customer in connection with a loan. Plaintiffs were at the time customers of Defendant for the purposes of 12 U.S.C. §1971 et seq., and specifically §§1972 and 1975. (A.280).

> Now that is the kind of practice that we are talking about here. *That is the only kind of legal violation that is alleged here.*

(A.407-708). (Emphasis added).

There is simply no support whatsoever for Bank and Herbert's contention that either the issue of promise to lend or commercial reasonabieness was actually litigated in the Federal Action. That fact alone requires reversal of the injunction as to the Trustee in Bankruptcy, a non-party to the Federal Action, since collateral estoppel applies where non-parties are sought to be precluded. *Montana v. United States,* 440 U.S. 147, 154 (1979)

Bank does not deny that the preclusive effect of the federal judgment must be measured by the final judgment of the Court of Appeals, i.e., that, as a *matter of law* the allegations of Plaintiffs' complaint in the Federal Action did not constitute a violation of the Bank Holding Company Act. *Parsons Steel v. First Alabama Bank,* 679 F.2d 242, 244 (11th Cir. 1982). (Emphasis supplied). No issue of law or fact litigated in the State Action is implicated in that judgment.

B. The Courts Below Improperly Applied The Anti-Injunction Act.

Bank and Herbert suggest that limiting a §2283 injunction to issues actually decided by the earlier federal judgment would overturn "almost forty years of unbroken, and uniform interpretation of the congressional purpose when the 1948 relitigation exception was enacted as §2283." (Respondents' brief p.24). That is simply not true. In that forty year period only two courts have even suggested that §2283 allows an injunction of issues which were not but arguably "could have been" litigated in the earlier federal judgment. *See: Woods Exploration and Production Company v. Aluminum Company of America,* 438 F.2d 1286 (5th Cir. 1971), cert. denied 404 U.S.

1047; *Harper Plastics v. Amoco Chemical Corporation,* 657 F.2d 939 (7th Cir. 1981). More importantly all of the precedents cited by Bank and Herbert and the decisions of this Court teach that exceptions to the Act must be narrowly construed. *Mitchum v. Foster,* 407 U.S. 225 (1972). *Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers,* 398 U.S. 281 (1970).

Bank places great emphasis on Justice Reed's dissent in *Toucey* and his suggestion that a federal judgment should be more than "only the basis for a plea of res judicata which is to be examined by another court, unfamiliar with the record already made, to determine *whether the issues were or were not settled by the former adjudication.*" (314 U.S. at 144) (Emphasis added). By suggesting that the federal court's decision would be what issues "were or were not settled" Justice Reed implies that an injunction should be limited to issues actually adjudicated.

Bank and Herbert's interpretation simply cannot be justified by the statute or its legislative history. The words "to protect or effectuate" indicate an intent to limit an injunction to a state court proceeding which could result in a decision inconsistent with the earlier federal judgment. That can only occur when the same issue is presented again in the state court proceeding.

No case prior to *Toucey* involved an injunction of issues which were not but arguably "could have been" litigated in a federal action. The injunction reversed in *Toucey* enjoined only isues actually litigated. The action of Congress to "restore the law as generally understood prior to *Toucey*" in no way indicates an intent to broaden the power of federal courts to enjoin state court proceedings further than necessary to abrogate that decision. The narrow construction advanced by Petitioners would foster the intent of the 1948 amendment while at the same time effecting the primary purpose of the Act - to limit federal court injunctions of state court proceedings.

C. Principles Of Comity And Federalism Prohibit An Injunction In This Case.

Bank and Herbert argue that principles of comity, federalism and equity do not apply in these circumstances. (Respondent's brief p.25). That argument simply ignores this Court's decision in *Mitchum v. Foster,* 407 U.S. 225 (1972).[3]

All the commentators who have discussed §2283 emphasis that there are no "automatic exceptions." Professor Moore, cited by Bank, states:

> As with any exception to §2283, a party must demonstrate sufficient need to be entitled to relief under the relitigation doctrine. The fact that an exception to §2283 exists is irrelevant in the absence of a further demonstration that a party equitably entitled to relief under said exception.

Moore's Federal Practice and Procedure, Para. 0.208a[3].

The American Law Institute, Study of the Division of Jurisdiction between State and Federal Courts, §1372, page 306 (1968) is cited and quoted by Bank:

> Ordinary a federal court would and should so defer. The requirements of irreparable harm and lack of any other adequate remedy by implicitly under present statute...but power should exist to grant the injunction in the *unusual case* where those requirements are met.

It is not surprising that Bank and Herbert argue that principles of comity, federalism and equity should not apply to the injunction in this case. If those principles are applied the

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[3] Indeed, the policy that the propriety of an injunction of a state court proceeding must be determined by principles of comity, federalism and equity was so important that three members of this Court, Chief Justice Burger and Justices White and Blackmun specially concurred in *Mitchum* to make that requirement clear.

necessity to reverse the injunction is readily apparent. Principles of comity and federalism weigh strongly against an injunction of a state court proceeding where the state court has invested substantial judicial resources and where there is no direct conflict between the earlier federal judgment and the state court action. This is especially true where the basis for the federal injunction - the application of res judicata or collateral estoppel -had been fully and fairly litigated in the state court.

The only argument Bank and Herbert make to excuse their knowing waiver is the suggestion that it was not clear the federal judgment barred the State Action until the State Action had been tried on the merits. That argument is curious indeed. If the preclusive effect of the federal judgment was so unclear as to require a trial on the merits in state court in order to determine a conflict, then this is not the case in which a §2283 injunction should be granted. An injunction of a state court proceeding under the relitigation exception to §2283 must be limited to circumstances where relitigation is "clear and unequivocal".

III. The District Court Erred In Enjoining The Trustee Who Was Not A Party To The Federal Action.

Bank suggests three arguments to support the injunction of the Trustee who admittedly was not a party to the Federal Action. First, Bank suggests that the Trustee is barred because he failed to intervene in the Federal Action. The argument ignores the fact of the intervening bankruptcy and the limited power given to a trustee in bankruptcy. The Trustee succeeded to all actions filed by the bankrupt prior to the adjudication of bankruptcy. Here the Trustee succeeded to the bankrupt's interest in the State Action. After proper motion by the attorney for the Trustee, the bankruptcy court granted the Trustee authority to pursue that action. (A.296, 289).

After the adjudication of bankruptcy, the remaining Petitioners brought a separate action in federal court. Without dispute those parties had no authority to represent the Trustee

and sought no relief on behalf of the bankrupt. Since no interests of the bankrupt were at stake in the Federal Action the Trustee had no power or duty to intervene.

Bank and Herbert assert and the district court found that the Federal Action would have primarily benefited the bankrupt. There is simply no evidence to support such a finding. The complaint, Bank's answer, pretrial order, the argument and the trial court's order on motion for summary judgment clearly show that the Plaintiffs in that case sought only damages they had incurred separate and aside from the bankrupt corporation. Trustee agrees that the Federal Action Plaintiffs were not entitled to recover for diminution of the value of the stock in the bankrupt and the Trustee later recover for the assets the bankrupt lost. (See Respondent's Brief p.37) However that issue was never decided since the issue of damages was never litigated in the Federal Action. The damages suffered by the bankrupt were claimed only in the State Action and Trustee succeeded to those claims which were assets of the bankrupt.

Bank and Herbert's argument that the Federal Action Plaintiffs claims in the State Action are barred is bottomed on the allegation that those parties split a single cause of action and sought recovery in two forums. It is curious indeed that Bank and Herbert also argue the Trustee is barred because he did *not* do the same thing!

Bank and Herbert also contend that the injunction of Trustee is proper because he was adequately represented by the Plaintiffs in the Federal Action. Bank and Herbert cite no case where adequate representation has been found absent the simultaneous finding that the party to be bound authorized himsef to be represented in the prior action. In those cases where both findings have been made the preclusive effect has been limited to issues actually adjudicated in the earlier proceeding.

CONCLUSION

For the reasons stated herein and in their original brief Petitioners respectfully request that this Court reverse the injunction and remand the case for dismissal with prejudice.

Respectfully submitted,

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